



VICTORIAN CASINO AND GAMING AUTHORITY

Second Triennial Review of the Casino Operator and Licence

June 2000

VICTORIAN CASINO AND GAMING AUTHORITY

Second Triennial Review
of the Casino Operator and Licence

TABLE OF CONTENTS

1. INTRODUCTION	1	<i>Matters excluded from consideration</i>	20
2. REVIEW SCOPE	2	<i>Outstanding matters from the first review</i>	20
Overview	2	<i>Probity conclusions</i>	21
Statutory provisions	2	Commercial/Finance.....	21
Legal opinion	4	<i>Scope</i>	21
Terms of reference.....	4	<i>Financial performance</i>	21
Process audit	6	<i>Economic impact/benefits to Victoria</i>	23
Public submission process.....	6	<i>Corporate governance</i>	24
Legislative change.....	6	<i>Southern Hotel Tower and Lyric Theatre</i>	26
3. SUB-COMMITTEE STRUCTURE.....	8	<i>The World Quality Standard in casino complexes</i>	27
Probity Sub-Committee	8	<i>Commercial/Finance conclusions</i>	30
Commercial/Finance Sub-Committee	8	Operational.....	30
Operational Sub-Committee	9	<i>Scope</i>	30
4. WORKING PARTY STRUCTURE.....	10	<i>Management expertise</i>	31
Probity Working Party	10	<i>Business ability</i>	31
Commercial/Finance Working Party	10	<i>Infrastructure management</i>	31
Operational Working Party	11	<i>Operational compliance</i>	32
5. METHOD AND EXTENT OF INVESTIGATIONS	12	<i>International comparisons</i>	35
Probity investigations.....	12	<i>Operational conclusions</i>	36
<i>Relationship to Crown/PBL merger</i>	13	7. FINDINGS.....	37
<i>Scope of probity investigations</i>	14	8. AUTHORITY'S OPINION.....	38
Commercial/Finance investigations	14	APPENDIX 1—GLOSSARY OF TERMS	41
<i>International benchmarking study</i>	15	APPENDIX 2—BACKGROUND OF THE MELBOURNE CASINO PROJECT	45
Operational investigations	16	APPENDIX 3—LEGAL ADVICE	49
<i>Management expertise</i>	17	Extracts of advice of Mrs S. M. Crennan Q.C.	49
<i>Business ability</i>	17	Extracts of advice of Mr D. J. Habersberger Q.C.	54
<i>Infrastructure management</i>	17	APPENDIX 4—PROCESS AUDITOR COMMENT.....	57
<i>Operational compliance</i>	18	APPENDIX 5—CALL FOR PUBLIC SUBMISSIONS.....	59
<i>International comparisons</i>	18		
<i>Material changes to parties holding an interest in the casino licence</i>	18		
6. RESULTS OF INVESTIGATIONS	19		
Overview	19		
Probity	19		
<i>Scope</i>	19		
<i>Crown/PBL merger and former associates</i>	19		

1. INTRODUCTION

Melbourne Casino Licence

Crown Limited operates the Melbourne Casino, as part of the Crown Entertainment Complex, on the south bank of the Yarra River at Melbourne, as authorised by a licence granted under and subject to the provisions of the **Casino Control Act 1991** on 19 November 1993.

One of the requirements of the Casino Control Act is that the licensing body—the Victorian Casino and Gaming Authority—must conduct, at three yearly intervals, a review of the casino operator and the licence. The first such review was finalised on 30 June 1997, three years from the commencement in temporary premises of casino operations and shortly after the transfer of those operations to the Crown Entertainment Complex.

This report documents the outcomes of the second triennial review.

2. REVIEW SCOPE

Overview

The Authority determined the scope of the Review by establishing terms of reference derived from an analysis of the relevant statutory provisions undertaken in light of the obligations of the parties to the transaction documents for the Melbourne Casino Project and the situation of the casino operator at the time of the Review.

These matters are summarised in Appendix 2—Background to the Melbourne Casino Project.

Legal advice was obtained on the requirements for the investigations prior to the formulation of draft terms of reference which were the subject of reference to, and comment by, the Auditor-General before being finally approved. The terms of reference included provision for a process audit role, as did the terms of reference for the first triennial review.

After finalisation of the terms of reference, the Review was commenced with a public announcement in the form of newspaper advertisements inviting members of the public to make submissions.

Following certain legislative changes in the Autumn 2000 Session of the Victorian Parliament, the Authority reviewed and reconsidered the terms of reference to determine whether any change was required prior to completion of this report.

Statutory provisions

Section 25 of the Casino Control Act sets out the requirement for triennial investigations.

25. Regular investigations of casino operator's suitability etc

- (1) Not later than 3 years after the commencement of operations in a casino, and thereafter at intervals not exceeding 3 years, the Authority must investigate and form an opinion as to whether or not—
 - (a) the casino operator is a suitable person to continue to hold the casino licence; and
 - (b) it is in the public interest that the casino licence should continue in force.
- (2) The Authority must report its findings and opinion to the Minister, giving reasons for its opinion and must take whatever action it considers appropriate in the light of its findings.

Section 3(1) of the Casino Control Act gives the meaning of “public interest” for the purposes of section 25(1)(b):

“public interest” or “interest of the public” means public interest or interest of the public having regard to the creation and maintenance of public confidence and trust in the credibility, integrity and stability of casino operations.

The background to these provisions is in the speech proposing the second reading of the Casino Control Bill in the Legislative Assembly on 24 April 1991. The then Minister for Major Projects said:

Once a casino licence is granted, the Casino Control Authority is required to investigate the casino at least once every three years. In its investigation the Authority is to consider whether the casino operator is a suitable person to continue to hold the licence and whether it is in the public interest that the licence remains in force.

The expression “suitable person”, as used in section 25(1)(a), is not defined in the Casino Control Act. However, some assistance is provided by section 9 of the Casino Control Act, which provides as follows:

9. *Matters to be considered in determining applications*

- (1) The Authority must not grant an application for a casino licence unless satisfied that the applicant, and each associate of the applicant (as defined in section 4), is a suitable person to be concerned in or associated with the management and operation of a casino.
- (2) In particular, the Authority must consider whether—
 - (a) each such person is of good repute, having regard to character, honesty and integrity;
 - (b) each such person is of sound and stable financial background;
 - (c) in the case of an applicant that is not a natural person, the applicant has, or has arranged, a satisfactory ownership, trust or corporate structure;
 - (d) the applicant has or is able to obtain financial resources that are adequate to ensure the financial viability of the proposed casino and the services of persons who have sufficient experience in the management and operation of a casino;
 - (e) the applicant has sufficient business ability to establish and maintain a successful casino;
 - (f) any of those persons has any business association with any person, body or association who or which, in the opinion of the Authority, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial resources;
 - (g) each director, partner, trustee, executive officer and secretary and any other officer or person determined by the Authority to be associated or connected with the ownership, administration or

management of the operations or business of the applicant is a suitable person to act in that capacity.

The Authority has been guided by the definition in section 9, in determining whether the casino operator is a suitable person under section 25(1)(a).

Legal opinion

The statutory provisions relevant to the Review are unchanged from those which applied to the first triennial review. Accordingly, in determining the form and scope of the investigations needed for this review, the Authority revisited legal advice it had obtained from senior counsel in 1996 and 1997 for the purposes of the first triennial review.

That advice was provided by Mrs Susan Crennan Q.C. and Mr David Habersberger Q.C.:

- Mrs Crennan advised in respect of the proper construction of the terms used in section 9 of the Casino Control Act; and
- Mr Habersberger advised in respect of the extent of the investigation required by section 25 of the Casino Control Act.

Relevant portions of those advices are transcribed in Appendix 3.

After consideration, the Authority accepted that these advices continued to provide appropriate guidance for investigations under section 25 of the Casino Control Act and determined to apply them to the second triennial review. The terms of reference (see below) were framed accordingly.

Mr Habersberger also provided advice on new process issues as they arose during the course of the Review.

Terms of reference

At its December 1998 meeting, the Authority approved proposed terms of reference for the Review:

1. The suitability of the casino operator and the associates of the casino operator, as nominated by the Authority from time to time, having regard to whether:
 - the casino operator and each such associate are still persons of good repute, having regard to character, honesty and integrity;
 - the casino operator and each such associate is of sound and stable financial background;
 - the casino operator still has a satisfactory ownership or corporate structure;
 - the casino operator has financial resources that are both suitable and adequate to ensure the financial viability of the casino;

- the casino operator has sufficient business ability to maintain a successful casino;
 - the casino operator has, or had, business associations with any persons or bodies who are not of good repute or who have undesirable or unsatisfactory financial resources;
 - the casino operator has the services of persons who have sufficient experience in the management and operation of a casino; and
 - all directors and executive officers are suitable persons to act in their capacities.
2. The standard of maintenance of the Southbank Casino Complex.
 3. The impact of the casino on tourism, employment and economic development generally in Melbourne and Victoria.
 4. The expertise of the casino operator, having regard to its compliance under the Casino Control Act, with:
 - the casino licence; and
 - agreements with the Authority and the State.
 5. The existence of, and adherence to, an appropriate corporate governance policy and procedures.
 6. Any other matters that the Authority considers relevant.

In January 1999, the Authority wrote to the Auditor-General advising him of the proposed program and methodology for the Review, providing—

- the proposed terms of reference;
- the proposed terms of reference for three Sub-Committees;
- the proposed terms of reference for the Process Auditor;
- the proposed advertisement to seek public submissions.

The Authority invited the Auditor-General to comment on the documents and sought his interest in performing the role of Process Auditor. He responded—

- supporting the decision to appoint a Process Auditor to oversee the investigations;
- declining the invitation to act as Process Auditor;
- supporting the proposed terms of reference and making the following recommendations for additional consideration—
 - ◆ the investigation of potential material changes to parties holding an interest in the licensed casino operations in the near future should be covered by the Review; and
 - ◆ data to be investigated should include the minutes of meetings (and related papers) of the board of directors, the audit committee and the compliance committee of Crown Limited.

The Authority incorporated the Auditor-General's suggestions in the terms of reference.

Process audit

Following a tender process, the Authority in April 1999 appointed as the Process Auditor for the Review Mr Christopher White, a partner with PKF (formerly Pannell Kerr Forster). Another PKF partner, Mr John Parias, was appointed to assist Mr White in this role.

The Process Auditor was given access to all relevant papers and personnel, was made aware of the times and places of all meetings of Sub-Committees and Working Parties and received all reports provided to members of the Authority.

The Process Auditor has provided a written comment for inclusion in this report. It is included at Appendix 4.

Public submission process

On 13 February 1999 the advertisement contained in Appendix 5 was published. As a result, one public submission was received.

Each of the matters in the public submission related to a probity issue. Each of those probity issues was already the subject of an investigation by the Authority and being considered for inclusion in this report. The Authority is satisfied that the comments in section 6 of this report adequately deal with the issues raised in the public submission.

Legislative change

On 9 May 2000, the **Gambling Legislation (Responsible Gambling) Act 2000** received Royal Assent, with its operative provisions being effective the following day, making amendments to a number of Gaming Acts, including the Casino Control Act.

The changes to the Casino Control Act were—

- to cap the number of electronic gaming machines at 2 500;
- in respect of one of the Authority's objects—the maintenance and administration of systems for the licensing, supervision and control of casinos—to remove an existing purpose—promoting tourism, employment and economic development generally in the State—and substituting the fostering of responsible gambling in casinos in order to minimise harm caused by problem gambling and accommodate those who gamble without harming themselves or others.

Promoting tourism, employment and economic development generally in the State remained one of the purposes—as set out in section 1(c)—of the Casino Control Act.

While the Casino Control Act still has an economic purpose, the amendments make it clear that the Authority no longer has a responsibility to manage its licensing systems for an economic purpose. The Authority therefore considered whether this report should include material relating to the third term of reference—“The impact of the casino on tourism, employment and economic development generally in Melbourne and Victoria”.

The Authority notes that Crown has a number of obligations, under the transaction documents, with respect to tourism, employment and economic development. Performance of obligations under the transaction documents is considered relevant to Crown’s general suitability and, as such, a general examination of economic impact will, in any event, properly have relevance to the Review.

Accordingly, the term of reference has been retained.

3. SUB-COMMITTEE STRUCTURE

In December 1998, the Authority established three Sub-Committees and three associated Working Parties to conduct the investigation components of the Review. The areas of reference were:

- Probity;
- Commercial/Finance;
- Operational.

The Director of Gaming and Betting, Mr Bill Lahey, was appointed the Review Coordinator to oversee the performance of the three Working Parties and facilitate reporting and meeting processes between the Sub-Committees and the Working Parties.

Mr Lahey and the Assistant Director, Legal and Legislation, Ms Sylvia Grobtuch, were ex-officio members of each of the Sub-Committees. The Process Auditor attended Sub-Committee meetings as deemed necessary.

The Authority held a special meeting on 2 May 2000 to receive the reports of the Sub-Committees.

Probity Sub-Committee

The Probity Sub-Committee, to which the Probity Working Party reported, comprised:

- Mrs Sue Winneke (Chairman);
- Reverend Professor Robert Gribben;
- Mr George Davis (Assistant Commissioner (Crime), Victoria Police).

The Sub-Committee met on three occasions—31 August 1999, 23 November 1999 and 17 March 2000—to review material disclosed by investigations. It also met on 12 April 2000 to consider the Working Party's investigation report and finalise its report.

The Sub-Committee reported to the Authority at the special meeting on 2 May 2000.

Commercial/Finance Sub-Committee

The Commercial/Finance Sub-Committee, to which the Commercial/Finance Working Party reported, comprised:

- Professor Anne Edwards (Chairman);
- Mr Henry Bosch;
- Dr Desmond Hore.

The Sub-Committee met on three occasions—on 31 August 1999, 23 November 1999, 29 February 2000—to consider status reports from the Working Party and again—on 27 April 2000—to consider the Working Party’s investigation report. The Chairman of the Authority, Mrs Sue Winneke, attended the meetings on 29 February 2000 and 27 April 2000.

The Sub-Committee reported to the Authority at the special meeting on 2 May 2000.

Operational Sub-Committee

The Authority’s Operational Sub-Committee, to which the Operational Working Party reported, comprised:

- Dr Desmond Hore (Chairman);
- Professor Trang Thomas;
- Mr Donald Swan.

The Sub-Committee met on three occasions—31 August 1999, 23 November 1999 and 29 February 2000—to consider status reports from the Operational Working Party and to provide advice and give direction. The Sub-Committee also met on two further occasions, 18 and 28 April 2000, to receive the final report of the Working Party.

Members of the Sub-Committee inspected the facilities at the Southbank Complex on 18 April 2000.

The Chairman of the Authority, Mrs Sue Winneke, attended meetings on 29 February 2000, 18 April 2000 (including the site inspection) and 28 April 2000.

The Sub-Committee reported to the Authority at the special meeting on 2 May 2000.

4. WORKING PARTY STRUCTURE

Three associated Working Parties were established to conduct the investigation components of the Review.

Probity Working Party

The convenor of the Probity Working Party was the Compliance Manager, Casino Operations Policy and Support Branch. The other members of the Working Party were the Assistant Directors of each of the Casino Operations Policy and Support and Licensing Operations and Policy Branches, a solicitor on staff and an investigations and policy officer.

The Probity Working Party met to discuss progress of investigations and issues, 14 times on a monthly basis commencing in February 1999. The Working Party and the convenor consulted with the Process Auditor throughout.

The Probity Working Party provided written progress reports to the Review Coordinator on 19 July 1999, 5 November 1999 and 21 January 2000. Representatives of the Working Party attended meetings of the Probity Sub-Committee on 31 August 1999, 23 November 1999, 17 March 2000 and 12 April 2000.

The Probity Working Party delivered a comprehensive report of its investigations to the Probity Sub-Committee on 29 March 2000. The report, having been vetted by the Process Auditor, was considered at the meeting on 12 April 2000. A copy of the report was provided to the other members of the Authority on 28 April 2000.

Commercial/Finance Working Party

The convenor of the Commercial/Finance Working Party was the Casino Project Manager, Legal and Legislation Branch. The other members of the Working Party were the Assistant Director, Policy Coordination and Research and two gaming investigators.

The Commercial/Finance Working Party held 15 regular monthly meetings, as well as additional meetings as necessary from January 1999 to March 2000, to plan their investigations and to discuss the progress of their investigations. The Process Auditor attended some of the early meetings to familiarise himself with the investigation program.

The convenor of the Commercial/Finance Working Party met with the other working party convenors on several occasions, to ensure that all issues were being addressed by the relevant Working Party.

The Commercial/Finance Working Party provided written progress reports to the Review Coordinator on 20 July 1999, 4 November 1999 and 21 January 2000. The

Convenor of the Working Party attended all four meetings of the Commercial/Finance Sub-Committee.

The Commercial/Finance Working Party provided a comprehensive report of its investigations to the Commercial/Finance Sub-Committee and the Authority Chairman on 7 April 2000. Copies of the report were provided to the other members of the Authority on 28 April 2000.

Operational Working Party

The convenor of the Operational Working Party was the Assistant Director, Casino Operations and Policy Support. The other members of the Working Party were the Assistant Director, Gambling Operations Audit and Finance, the Chief Casino Inspector, a senior gaming investigator and the administration officer responsible for the day to day implementation of operational regulation in the review period.

The Operational Working Party held monthly meetings commencing on 17 May 1999 and also had periodic consultations with the Process Auditor. The Working Party provided three written status reports for meetings of the Operational Sub-Committee and a final comprehensive report of its investigations for the meetings of the Sub-Committee held on 18 and 28 April 2000. The other members of the Authority also received this report on 28 April 2000.

5. METHOD AND EXTENT OF INVESTIGATIONS

When, in December 1998, the Authority considered terms of reference for the Review generally, it also considered terms of reference for each of the Sub-Committees and the investigative functions of the Working Parties. As mentioned in section 2, the Auditor-General commented on these terms of reference at the Authority's invitation and generally found them sufficient, but made suggestions that additional matters be considered. The Authority accepted the suggestions and made changes to accommodate those matters in the terms of reference.

In February 1999, Crown was provided with the terms of reference in their final form and invited to make a submission. Crown accepted this invitation, providing its written submission on 9 February 2000.

The Authority agreed that a benchmarking study be undertaken of eight international casinos. This study covered matters relevant to the terms of reference of the Commercial/Finance and Operational Sub-Committees. To avoid repetition, the method and extent of the study is detailed on page 15 under the Commercial/Finance investigations heading.

Probity investigations

The final terms of reference for the Probity Sub-Committee, which formed the basis of the Working Party's activities, were:

1. To follow the relevant requirements of section 9 of the **Casino Control Act 1991**, as they applied to the granting of a casino licence, to establish whether or not the casino operator and each associate of the operator is a suitable person to be concerned in or associated with the management and operation of a casino, having regard to whether:
 - each such person is of good repute, having regard to character, honesty and integrity;
 - each such person is of sound and stable financial background; and
 - any of those persons has any business association with any person, body or association who, or which, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial resources.
2. To investigate:
 - (a) issues discovered subsequent to the completion of the "Review of Casino Operator and Licence" in June 1997.
 - (b) issues discovered subsequent to the completion of probity investigations for the "Review of Casino Operator and Licence" in June 1997, where new or further information has emerged or is discovered in relation to historic matters previously reported to the Authority, and where probity investigations for the casino licence are relevant to the Authority's overall assessment of the licensee or associates.

- (c) issues discovered subsequent to the completion of probity investigations for the casino licence in September 1993, where new or further information has emerged or is discovered in relation to historic matters previously reported to the Authority, and where probity investigations for the casino licence are relevant to the Authority's overall assessment of the licensee or associates.
3. To investigate:
- the casino licensee company;
 - any company with a shareholding of 5% or more in the casino licensee company;
 - any individual with a shareholding of 5% or more in the casino licensee company;
 - any individual or company who is an "associate", within the terms of section 4 of the **Casino Control Act 1991**, of the casino licensee;
 - any actual or potential future material changes to the parties holding an interest in the casino licence.
4. To determine and report any matters regarded as having a commercial/financial dimension to the Commercial/Finance Sub-Committee.

The terms of reference provided the basis for the scope and methodology of investigations, which were conducted pursuant to a detailed investigation matrix. The investigations included the identification of new probity issues, incomplete matters from the first triennial review and matters which remain incomplete from this review.

Probity investigations focused on the casino operator (Crown) and its parent company Publishing and Broadcasting Limited, another company associated with the parent company, Consolidated Press Holdings Limited, and individuals regarded as being either formal associates of, or having a relevant direct or indirect association with, the casino operator.

Relationship to Crown/PBL merger

Crown and PBL announced a proposal to merge at about the same time as the terms of reference for the Review were being finalised. A transaction such as the Crown/PBL merger necessarily involves a major probity investigation because of the statutory requirement for proposed new formal associates to be found suitable, prior to them exercising any control over a casino operator. The extensive probity investigations undertaken in respect of PBL, CPH and formal associates for the purpose of the Crown/PBL merger (ultimately completed on 30 June 1999) formed a significant part of the investigations, revised and updated as necessary, for the Review.

By reason of the Crown/PBL merger, a number of entities ceased to have an association with Crown. Legal advice was obtained on matters involving people and entities whose association with the casino operator ended during the Review. The advice of Mr David Habersberger was that, as the Authority had power to investigate only people with an association, matters involving former associates should be discontinued. This closed a number of probity matters.

Scope of probity investigations

For the purposes of the Review, two companies (PBL and CPH) and 16 individuals were identified as formal associates of the casino operator.

It was determined that probity investigations concerning other individuals who were directly or indirectly associated with the casino operator would be undertaken in respect of casino employees at or above the level of Shift Manager. (All of these people have significant decision making roles affecting the operations of the casino.) This group encompassed all of Crown's senior managers, executive staff and company secretaries and numbered 187 persons.

Thorough investigative checks were completed in respect of the casino operator, its formal associates and the other associated individuals. Crown, PBL and CPH were required to provide updates of information (in the form of answers to detailed questionnaires) previously provided to the Authority. Personal information forms requiring comprehensive information about personal, family, financial and other matters were completed by 101 individuals whose most recent probity assessment (either for the first triennial review or under the special employee licensing process) was more than 12 months old. A review of those probity assessments was undertaken.

Checks were completed by the Victoria Police, the National Crime Authority and the Australian Securities and Investments Commission on behalf of the Authority. Financial checks were undertaken with Dun & Bradstreet. Material from those sources was analysed and further investigations undertaken where necessary.

Extensive investigations were undertaken into all new probity issues identified. These investigations included a number of interviews with current and former associates, including some resident overseas.

Commercial/Finance investigations

The final terms of reference for the Commercial/Finance Sub-Committee, which formed the basis of the Working Party's activities, were:

1. (a) To follow the relevant financial and commercial requirements of sections 9, 10 and 11 of the **Casino Control Act 1991**, as they applied to the granting of the casino licence, to establish whether or not Crown, and each of its associates, is a suitable person to be concerned in or associated with the management and operation of the Casino.
- (b) To establish whether there are any financial or commercial aspects of the casino operations which could damage the public confidence and trust in the credibility, integrity, honesty and stability of casino operations or Crown.
2. The investigations will include, but not be limited to:
 - Crown's corporate governance, policy and procedures;
 - investigations by the Australian Securities and Investments Commission (ASIC) and Australian Stock Exchange (ASX);
 - Crown's financial performance against projections;

- Crown's actual and projected level of indebtedness and its relationship with its banking syndicate;
- Crown's financial viability in regard to the remaining parts of the Project and the financial capacity of Crown and its sponsor Hudson Conway Ltd to successfully complete the Project;
- Crown's internal records and financial dealings, including financial dealings with Hudson Conway Ltd and its subsidiaries;
- compliance of Crown and Hudson Conway with the various agreements/transaction documents;
- related party transactions with Director related entities, other related parties and additional related parties;
- changes to the corporate structure;
- the financial strength of shareholders with more than 5% holding in Crown;
- any financial or commercial issues raised in public submissions;
- minutes of meetings (and related papers) of the board of directors, the audit committee and the compliance committee of Crown;
- any other financial or commercial matters which become known or are discovered during the investigation process, that may be relevant to the purpose of the Review;
- any actual or potential future material changes to the parties holding an interest in the casino licence.

As a consequence of the Crown/PBL merger, Hudson Conway ceased to be involved in Crown's commercial arrangements. Therefore some of the matters listed in term of reference 2 ceased, during the investigation phase of the Review, to be relevant.

International benchmarking study

International comparisons are relevant to the Review, not only because of what can be learned from the experiences of large overseas operators, but also because Crown has specific obligations to maintain the Southbank Complex as a high quality, international class casino complex. International comparisons are relevant to both the Commercial/Finance and Operational references, and the significant overlap between them can be seen from the results of the investigations.

As indicated at the start of this section, the Authority agreed that a benchmarking study be undertaken to facilitate the making of international comparisons and information gathering generally. The benchmarking study was devised in consultation between the Commercial/Finance and Operational Sub-Committees, the Director of Gaming and Betting and the Process Auditor. It was undertaken by the Casino Project Manager over 10 days in October 1999.

The eight casinos chosen for the study were:

- the largest casino in Asia—Genting Highlands in Malaysia;
- four of the newest large “mega-casinos” in Las Vegas—Bellagio, Mandalay Bay, New York and Paris;

- the first of a new generation of mega-casinos—MGM Grand in Las Vegas;
- Crown's main Australian competitor—Star City in Sydney;
- an Australian casino with a tradition of success in the high roller market—Burswood International Resort in Perth.

The Casino Project Manager visited each casino, assessing it—

- against criteria agreed with the Commercial/Finance Sub-Committee for the purposes of that Sub-Committee's terms of reference; and
- for each casino's operational performance and its quality and utilisation of infrastructure for the purposes of the Operational Sub-Committee's terms of reference.

The Casino Project Manager obtained comprehensive materials concerning the performance of those casinos regarding corporate compliance, operational performance, financial performance and quality and utilisation of infrastructure. As a follow-up, he also obtained from the international finance house Salomon Smith Barney a copy of their comprehensive equity research report on United States gaming stocks dated 27 December 1999.

The benchmarking study sought to provide a realistic and appropriate basis against which to determine whether Crown is complying with its various obligations in relation to world class standards. A particular objective was to assess, on a factual level, the standards of the best international casinos in the world. In conducting the benchmarking study, information was sought and obtained on the level and quality of reinvestment or capital expenditure being undertaken at the various casinos to determine whether there was an appropriate benchmark which related capital expenditure to a percentage of operating profit or depreciation.

Operational investigations

The final terms of reference for the Operational Sub-Committee, which formed the basis of the Working Party's activities, were:

1. To follow the relevant requirements of section 9 of the **Casino Control Act 1991**, as they applied to the granting of a casino licence (so far as that section applies to casino operational investigations), to establish whether or not:
 - (a) Crown has the services of persons with sufficient experience in the management and operation of a casino; and
 - (b) Crown has sufficient business ability and can maintain a successful casino.
2. To investigate Crown's performance in:
 - (a) operating the Melbourne Casino at the Southbank Complex; and
 - (b) compliance with legislation, rules of games and the Internal Control Manual.
3. To investigate:

- (a) any actual or potential future material changes to the parties holding an interest in the casino licence.

Management expertise

The Working Party assessed the expertise and experience of the executive management structure of Crown by examining the organisational structure of Crown's various business units and the background and experience of each of its key management personnel.

Business ability

Consideration was given to the manner in which Crown executives use business strategies to operate the casino. This included an examination of departmental business plans and organisational structure of the following six Crown departments:

- Gaming Machines;
- International Business;
- Marketing;
- Security and Service;
- Surveillance;
- Table Games.

Infrastructure management

Infrastructure was studied in terms of its utilisation by Crown in respect of its contractual obligations to attract patrons and generate gross gaming revenue. The following were examined:

- demographics (location and size of facility);
- gaming table layout;
- EGM layout (including jackpot location);
- new types of games;
- newly developed areas;
- ancillary facilities (restaurants, cinemas etc);
- training/training manuals;
- marketing/promotions (tournaments, sports betting);
- international offices;
- amendments to the approved system of internal controls and accounting procedures;
- security and surveillance;
- recruitment/special employee licensing.

Operational compliance

Operational compliance was assessed by reviewing the Authority's records for details of any non-compliance by Crown with legislation, rules of the games and the approved system of internal controls and accounting procedures.

This material included the results of disciplinary action taken by the Authority, reports from inspectors based at the Southbank Complex and reports prepared by the Director of Casino Surveillance.

Complaints from patrons to the Director of Casino Surveillance and the Authority were also analysed as was information formally requested, and received, from the Australian Transaction Reports and Analysis Centre, Liquor Licensing Victoria, Tourism Victoria, the Victoria Police and the Victorian WorkCover Authority.

International comparisons

As noted above, one of the purposes of the international benchmarking study was to assess the utilisation of infrastructure.

The infrastructure assessment criteria included the framework previously used, in the casino bid process, by the VCCA's Development and Siting Advisory Panel. That framework addresses:

- external design (location, building set back, adequacy of porte cochere);
- internal layout of gaming area (theming, decor, flexibility, atmosphere);
- patron movement (ease of access/circulation to gaming areas, hotel, restaurants);
- relationship between food/beverage and gaming areas (location, range, capacity);
- relationship between retail areas and other areas (location, quality, size, diversity);
- car parking and taxi storage (location, size, access, user friendliness, quality);
- general (level of service, range of entertainment, sports betting, indoor plants);
- quality and level of customer service (staff attitude, culture of service, staff training);
- quality of air conditioning system and adequacy of non smoking areas;
- impact on employment (full time equivalent employees and contractors);
- quality, suitability and effectiveness of marketing and promotional activities.

Material changes to parties holding an interest in the casino licence

The Working Party did not identify any material changes to parties holding an interest in the casino licence other than changes in the management of Crown as a result of the Crown/PBL merger. These were identified and dealt with as issues relating to management expertise and business ability.

6. RESULTS OF INVESTIGATIONS

Overview

In the closing stages of preparation of this report, the Authority became aware of some key issues about which it may have cause to draw adverse conclusions. The Authority decided that Crown should be invited to comment on those key issues before any conclusions were reached. In addition to affording fairness to Crown, this was done to ensure accuracy and completeness in the material on which conclusions would be based.

These matters all related to the terms of reference for the Commercial/Finance and Operational Sub-Committees. (Probity issues are, as a matter of course, non-negotiable and would not be referred for comment of the nature sought from Crown concerning the Commercial/Finance and Operational issues.)

Crown responded in a timely fashion to all the issues raised. In some cases, the response removed the cause of concern and the matter is not referred to. In other cases, where a cause for concern remains, it is mentioned in this report and Crown's comment is referred to.

Probity

Scope

All probity issues—raised by any allegations concerning the casino operator, formal associates and other individuals having a direct or indirect association with the casino operator, which were made directly to the Authority, in the media or in the Victorian or Commonwealth Parliaments, together with any matters separately identified by the Probity Working Party—were investigated and considered in the Review. The Authority had regard to each of the issues individually and all of them collectively in determining, from a probity perspective, Crown's suitability to continue to hold the casino licence.

The Authority is satisfied that probity investigations undertaken by the Working Party were conducted in accordance with and fulfilled the requirements of the terms of reference for the Probity Sub-Committee.

Crown/PBL merger and former associates

The Crown/PBL merger in June 1999 and consequential resignation of various directors and executives resulted, during the course of the Review, in a number of individuals and companies ceasing to be formal associates of the casino operator.

Legal advice provided by Mr David Habersberger in relation to the former associates was that they are no longer amenable to regulation by the Authority; that the Authority has no jurisdiction to proceed with investigations concerning former

associates; that those investigations should be terminated forthwith; and that to continue them would be beyond the powers conferred by the Casino Control Act.

Accordingly, investigations relating solely to former associates (both individuals and entities) were discontinued.

Matters excluded from consideration

The Authority determined that two matters being investigated for the Review, which were incomplete at the time of making this report, should not be considered in forming its present opinion as to the suitability of the casino operator to hold the casino licence. They are:

- an investigation being conducted in Trieste, Italy, by the Public Prosecutors Office into allegations raised in a report by the Guardia di Finanzia (the Italian tax or fiscal police), concerning the setting up of a wool scouring plant in Italy by Wooltech Europe S.r.l., a subsidiary company of CPH;
- substantial taxation assessments by the Australian Taxation Office for CPH, CPH Property Pty Ltd and Murray Leisure Group, which had been the subject of appeals by CPH and those subsidiaries in the Full Federal Court and continue to be the subject of litigation in the High Court of Australia.

The progress of these matters is being closely monitored and the Authority will consider each of them upon the conclusion of the respective investigations or incomplete court processes. If the Authority considers it appropriate in respect of either matter, it will proceed to exercise its powers pursuant to the relevant provisions of the Casino Control Act.

Outstanding matters from the first review

In the first triennial review, there were three matters that the Authority determined should not be considered in forming its opinion as to the suitability of the casino operator to continue to hold the casino licence. That determination was made on the basis that the relevant issues of concern arose from incomplete investigations by other agencies or court processes and with the intention that the matters would be considered by the Authority upon the conclusion of investigations or processes.

Those matters were:

- allegations, made in the Supreme Court of Victoria and subsequently being investigated by the Victoria Police, of criminal conduct by Gleem Pty Ltd, a subsidiary of Hudson Conway, concerning the proposed construction of the Capital Plaza project for the Gas and Fuel Corporation of Victoria;
- allegations, in proceedings in the Federal Court of Australia, of misleading and deceptive conduct by Amadio Pty Ltd, a subsidiary of Hudson Conway, and other parties, concerning the sale of a building in Carlton;
- non-litigated allegations concerning the involvement of CPH in the sale of an environmental engineering company to Australian National Industries Ltd, at a time when CPH was its controlling shareholder.

Gleem Pty Ltd and Amadio Pty Ltd are subsidiaries of a former associate. In accordance with legal advice, the investigations of them were discontinued.

The Authority is aware that the matter concerning Australian National Industries has been examined in a report by Mr Robert Ellicott Q.C., which report was privately commissioned by the board of that company after CPH ceased to be the controlling shareholder. The Authority, having no independent means to examine the matter itself, determined to defer consideration of the allegation involving CPH until the release of Mr Ellicott's report. However, despite being requested, that report has not been released to the Authority and is not obtainable. Accordingly the allegations cannot be substantiated unless and until the contents of Mr Ellicott's report are revealed and those contents then indicate that there is a basis for the allegations.

Probity conclusions

Subject to the case of the incomplete matters which, as already noted, have not been considered in this investigation, the Authority is satisfied that, for the purposes of the Review, all probity issues have been comprehensively investigated.

The Authority is satisfied, having regard to the probity issues, both individually and collectively, that none of them render the casino operator unsuitable to hold a casino licence.

Commercial/Finance

Scope

The Commercial/Finance investigations focussed on the following:

- financial performance;
- economic impact/benefits to Victoria
- corporate governance;
- Southern Hotel Tower and Lyric Theatre;
- the world quality standard in casino complexes.

In undertaking these investigations, the Authority was particularly concerned to assess Crown's willingness and ability to meet its obligations under the transaction documents as an indicator of its suitability to continue to hold a casino licence.

Financial performance

In its investigations, the Working Party noted that the Crown/PBL merger (completed on 30 June 1999) resolved Crown's previously acknowledged financial difficulties. (Prior to the Crown/PBL merger, in the three year period ended 30 June 1999, Crown had incurred substantial losses, totalling \$657.1 million before income tax.)

The Working Party also investigated Crown's involvement in the high roller market. Early gaming projections by Crown indicated that a significant portion of its revenue

would come from high roller activity. The reality has been that high roller gaming has been a high risk, low yield activity which, because high turnover gaming can have volatile outcomes, contributed to operational losses in some months in the review period.

Operational losses were accentuated by repeated large abnormal write-downs of some assets, because those assets (many of which were ancillary to the high roller business) failed to earn sufficient income to justify their book value. As a consequence, Crown required several capital injections to maintain compliance with financial covenants and to provide liquidity for the casino operations.

Upon the settlement of the Crown/PBL merger, PBL subscribed over \$1 066 million cash for new ordinary shares in Crown. PBL also converted preference shares acquired from Hudson Conway into \$240 million of ordinary equity. These actions resulted in a substantial reduction in Crown's gearing ratio from near the 60% limit specified in the Casino Agreement to less than 20%. (In November 1997, the Authority had issued a formal notice under the Casino Agreement requiring Crown to rectify a breach of the 60% gearing limit. Crown's gearing ratio—60.8% at 30 September 1997—came back under the limit following a rights issue of new ordinary shares and an issue of preference shares to Hudson Conway as part of the acquisition of the Operations Agreement and the right to its cash flows.)

The market capitalisation (the number of shares on issue multiplied by the market price) of Crown has fluctuated widely as shown in Chart 6.1 below. Crown's peak market capitalisation was \$1.69 billion, achieved on 6 May 1997.

Chart 6.1—Market Capitalisation of Melbourne casino operator over time

(Note: On 30 June 1999, PBL acquired all of the ordinary shares in Crown in a 1 for 11 share swap. There had been 1 003 210 203 Crown shares on issue, requiring PBL to issue 91 096 708 ordinary shares to complete the transaction. The shares on issue shown on this graph, for the period following 30 June 1999, are the shares PBL issued in order to acquire Crown.)

Economic impact/benefits to Victoria

In its submission (9 February 2000) Crown estimated that since the temporary casino opened on 30 June 1994, Crown had generated \$6 162 million in total economic benefit to the State. This included—

- contributions to revenue: \$980 million in direct payments to the State and \$133.5 million in indirect contributions as payments to State and local agencies (including pay-roll tax, land tax and council rates);
- employment related contributions: operational employment costs of \$2 718 million and construction related costs of \$1 846 million;
- tourism related economic benefits of \$476 million;
- sponsorship and community support programs of 9.2 million.

The Authority confirmed the amounts which were claimed as contributions to revenue.

At 31 December 1999, there were 7 464 people employed by all businesses at the Southbank Complex. This is understood to be the largest number of staff at any Australian casino complex. Crown has generated over \$522 million in direct salaries and wages since 1 July 1997.

Victorian tourism numbers, for international and interstate visitors, have increased during the review period, but the Authority has not been able to quantify the extent to which the Southbank Complex has contributed to this increase. There is anecdotal evidence that tourists often extend their stay by one extra day to visit the Southbank Complex.

Following the grant of the casino licence the Government commenced a number of capital works projects (such as the now-completed Melbourne Exhibition Centre and the nearly-completed Carlton campus of the Museum of Victoria) on the understanding that casino licence fees and taxes would provide the necessary funding both in the initial stages and on an on-going basis to enable those projects to be completed without the State incurring debt. The taxation performance of the Melbourne Casino has been consistent with that objective.

The existence of the Southbank Complex is considered by the Authority to have encouraged significant new building developments in its general vicinity by the private sector.

Corporate governance

Corporate governance issues were relevant in the period of the Review not only because of Crown's corporate status but also because of its obligations under the transaction documents for the Melbourne Casino Project.

The specific obligations to build and maintain the Southbank Complex to a world quality standard and to build the Southern Hotel Tower and Lyric Theatre are dealt with elsewhere in this report.

Following the Crown/PBL merger, Crown ceased to be a listed public company and has ceased holding public general meetings of members. As a consequence, there has been a diminution in the disclosure—through public channels—of information pertinent to the Authority's functions. In particular, this is because the Authority formerly received copies of all notices and circulars to shareholders and could attend meetings of the company.

In addition, casino matters have received less prominence in statutory ASIC reporting and ASX disclosure as part of PBL than they would have received if reported by a listed public company with the single purpose of operating a casino, and that new level of disclosure may not parallel the interests of the Authority.

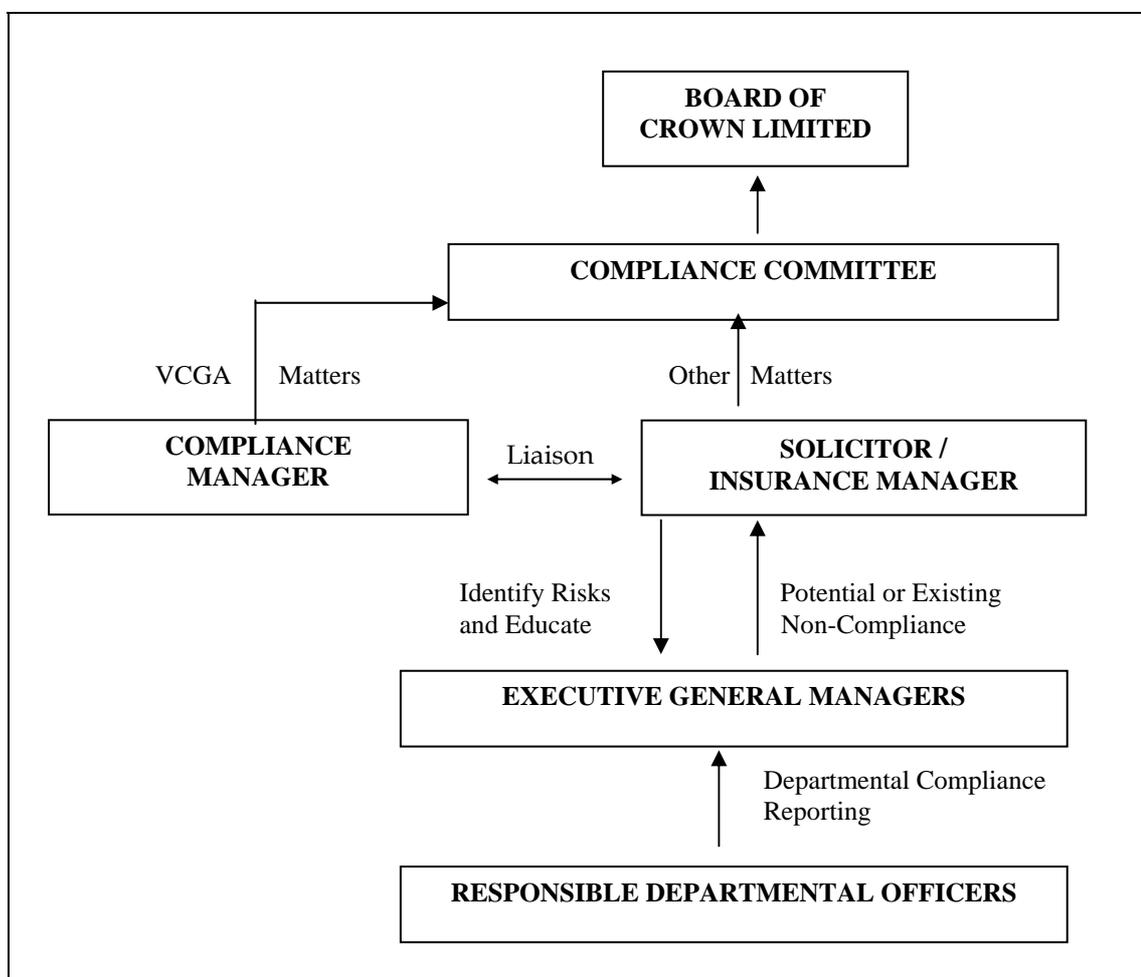
When Crown was invited to comment, Mr James Packer (Chairman of both Crown and its parent, PBL) affirmed PBL's commitment to ensure a high level of corporate governance and expressed a view that present arrangements were adequate. He noted that Crown now maintained company secretaries in Melbourne as well as Sydney to ensure that Crown meets its legal obligations and that there is full disclosure. Further, Mr Packer sought details of any area believed by the Authority to be deficient so that the matter could be rectified.

The Authority does have the power to require that Crown disclose whatever relevant information the Authority requires. The Authority is therefore not concerned at this stage by the consequences of the Crown/PBL merger as they relate to disclosure.

A number of other issues arose during the three year review period, the most significant of which (the gearing ratio rectification notice) resulted in ASX or ASIC investigations. These investigations led to Crown executing an enforceable undertaking on 11 September 1998 agreeing to greater formality in its internal corporate governance and compliance processes.

Crown has now implemented the compliance program, under which a committee of its board of directors receives information and monitors compliance in a formal and structured way. The flow of information in Crown's compliance program is shown in Chart 6.2.

Chart 6.2—Crown's Compliance Flow Chart



A further matter of note concerns the composition of Crown's board of directors.

Crown's constitution (which replaced what was formerly known as its memorandum and articles of association) requires Crown to have at least two independent directors. As a result of resignations of a number of directors following the Crown/PBL merger, there is now only one independent director.

Following discussions with Crown representatives in March 2000 regarding possible changes to the constitution, Crown advised (within the week) “that the Company is reviewing its constitution and any proposed amendments will be submitted to the Authority for consideration, pursuant to clause 22.1(k) of the Casino Agreement.”

This is another matter on which Crown was invited to comment. Mr James Packer responded that PBL considered the current composition of the Crown board, with two Victorian directors, appropriate.

The Authority does not consider a Victoria-based director to be the same thing as an independent director. While accepting that PBL is a listed company with independent directors, the Authority is concerned that the proper level of decision making for the Crown board requires a degree of independence from the parent company. Crown is the licensed entity responsible for detailed technical compliance with the regulatory regime and it is the board of Crown which is primarily responsible for Crown’s actions.

The Authority will await Crown’s constitution amendment submission with interest.

Southern Hotel Tower and Lyric Theatre

The Management Agreement, which governs the main commercial and development issues for the Southbank Complex, contains mandatory completion dates for various stages of the complex. The last of these completion dates requires the complex to include a Southern Hotel Tower (of at least 465 rooms located on the casino site) and a Lyric Theatre. In October 1998, the Government, following advice from the Authority, granted Crown a four year extension for the completion date, in respect of the Southern Hotel Tower and Lyric Theatre, to 30 November 2003.

The extended completion date reflected changed business conditions prevalent at the time. In respect of the hotel, this included reduced demand for accommodation in the light of the Asian economic decline and the construction of new hotels in Melbourne by other parties. In respect of the Lyric Theatre obligation, this included an existing surplus of theatre seats in large commercial theatres (which was expected to continue past the original completion date) and the economic impact such a theatre would have on existing operators.

The extension of time was effected by the Fifth Deed of Variation to the Management Agreement, dated 1 October 1998 and ratified by Parliament on 24 November 1998.

Crown did not address the requirement to build the Southern Hotel Tower and Lyric Theatre in its February 2000 submission and the Working Party came across no evidence of advance planning in preparing its report.

Crown was invited to comment on the matter of the Southern Hotel Tower and Lyric Theatre. Mr Packer’s response set out indicative timelines for the completion of the Southern Hotel Tower. A follow-up briefing by Crown executives demonstrated that Crown was and had been actively considering a number of options for the tower, all of which appear to be achievable prior to the completion date. Crown also advised

that it proposed to resolve the Lyric Theatre issue at the time the Southern Hotel Tower option was confirmed, after taking the details of that option into account.

The World Quality Standard in casino complexes

Two objectives of Crown's promises to the State (in the transaction documents) are to ensure that Crown—

- would build a casino complex of a world quality standard in accordance with an approved development proposal and timetable; and
- will operate that casino as required by the Casino Control Act and according to the best operating practices in international casinos.

Crown's on-going obligations in this respect are—

- to maintain the Southbank Complex as a high quality international class casino complex;
- to ensure that each retail business in the Southbank Complex is of a type and nature consistent with a high quality international class casino complex;
- to conduct the Melbourne Casino having regard to the best operating practices in international casinos of similar size and nature;
- through a wholly owned subsidiary, Crown Management Pty Ltd, to ensure that the operation of the Southbank Complex is supervised and directed to a first class standard comparable to world class international casinos, hotels and other facilities.

There have been comments from casino patrons (each month Crown provides the Authority with a report on its "Guest Comments", containing many descriptive complaints) about the condition and quality of the Southbank Complex. In the light of these matters, the Authority was concerned to examine whether the Southbank Complex remains a facility of the required world quality standard in casino complexes.

One of the tasks for the benchmarking study was to establish what in fact constitutes a high quality international standard casino or a world class international casino or hotel. The relevant and detailed information in the comprehensive materials gathered during the visits to eight large international casinos in October 1999 provided a comparative framework and an objective context against which various aspects of the Southbank Complex could be assessed.

One international comparison of relevance concerns the revenue mix. The Southbank Complex in 1998–99 was dependent on gaming for 77% of its total revenue. By comparison, the largest 20 casinos in Las Vegas, which generate much more revenue from entertainment and family activities, rely on gaming for 50% of total revenue.

Another important factor was an on-going commitment to capital reinvestment to maintain and renew the physical attributes of these properties and retain their prominence in the international gaming market. However, apart from its obligations under the Management Agreement to construct a Lyric Theatre and a Southern Hotel

Tower (see the separate discussion on page 26), there is no evidence at the present time that Crown has any design or development plans to improve the complex, with the aim of attracting more “destination” visitors (that is, people from interstate and overseas visitors who come to, or spend extra time in, Melbourne because there is a casino complex here).

As noted in section 5, the benchmarking study sought to provide a realistic and appropriate basis for comparison of Crown with the best international casinos. The following issues of difference therefore arise:

- Crown operates a stand-alone casino on a built-up city site.
- The North American casinos in the study are all owned by multi-site gaming companies, which are currently and continuously enlarging their businesses through the extension of existing properties, the development of new properties or the acquisition of already operating casinos.
- The operator of the Genting Highlands casino, although a single casino company, is not constrained by availability of land and has been expanding and developing its site on an on-going basis over the past two decades.

Recognising the differences in the situations and investment strategies of these companies, the Authority found useful the ratio of the amount these companies spend on capital investment and reinvestment in relation to their EBITDA. Their anticipated capital spending over the next five years is in the range 40%–50%.

More specific guidance can be obtained from the recently released annual report of Park Place Entertainment Inc, which owns or has an interest in 28 gaming properties in five countries and is the world’s largest casino company. In 2000, Park Place plans to spend “on normal capital replacement at our casino properties and make some selective expansion or improvements” approximately \$US225 million. On the basis of analysts’ forecasting of PPE’s EBITDA at \$1.3 billion, this is a capital expenditure rate of 17%.

Park Place provides a rationale for this level of capital expenditure in its report: “Obsolescence arising from age and condition of facilities is a factor in the gaming industry. We intend to continue to make substantial investments to maintain our facilities in first-class condition in order to preserve our competitive position.”

In looking for other measures to find a proxy for a mixed casino and entertainment environment, the Authority noted that the best international casinos “theme” themselves as part of a process of continuous self re-invention to maintain market interest. Although theme parks are not the same thing as casinos, the Authority felt that some insight may be gained by comparing reinvestment levels at theme parks.

The article “Theme Parks Capex Management—Searching for Predictability” was published by PKF Consulting in *The Brave Statement*, Issue 5, Autumn 2000. This article noted that the public will stop coming to theme parks if the product is not kept fresh by an appropriate level of reinvestment. It reported on an attempt to find the ideal reinvestment model, by analysing 24 theme parks in four countries over a 20 year period to 1998. The correlation analysis was inconclusive because of the “diversity of different conditions”. It did note that “the average Capex commitment

for the 139 points (studied) was 42.3% of EBDITA". This is consistent with the anticipated capital expenditure of the benchmarked casino companies overall.

Crown's capital expenditure promise is to spend a minimum of \$300 million over the next 10 years for improving and maintaining the casino assets. Based on Crown's estimated EBITDA of around \$220 million per year, the average of \$30 million per year gives a ratio of 14%.

Crown's response, to an invitation to comment on the world quality standard, is summarised as follows:

- Crown's forecast 1999–2000 capital expenditure on Southbank Complex activities would be near \$41 million (out of a total \$45 million capital expenditure forecast for Crown as a whole in 1999–2000).
- The Southbank Complex is still effectively a new facility, meaning that it requires much less refurbishment than an older property.
- In addition to money spent by Crown, Crown has encouraged its tenants—through commercial arrangements—to make significant capital commitments to the Southbank Complex. Approximately \$20 million has been spent by tenants redeveloping the non-gaming entertainment and eating areas in the Clarke Street Building.
- In respect of theme parks, their activities are more capital intensive than casinos, making theme park comparisons of limited relevance. The sorts of innovations required by casinos are less capital intensive.

When briefed by Crown on its 1999–2000 forecasts, representatives of the Authority noted that approximately 29% of the \$41 million to be spent as Southbank Complex related capital expenditure was for gaming equipment and infrastructure with 45% on improvements to the property (including the existing Crown Towers Hotel), 12% on offices and staff accommodation and 3% on productivity measures (that is, measures which allow operating costs to be reduced).

Crown's Chairman was also invited to comment specifically on capital expenditure using Park Place as a benchmark. Mr James Packer pointed out that—

- Crown's likely capital expenditure for 1999–2000 will be \$45.1 million;
- this amount is 20.5% of the assumed EBITDA of \$220 million and therefore above the 17% reinvestment rate that Park Place's approach suggests;
- this amount does not include capital spending by Crown's tenants, estimated (by Crown) to be in excess of \$20 million;
- Crown considers it important that the Authority use actual expenditure rather than the undertaking to spend a minimum of \$300 million over 10 years.

(The Authority notes that—removing capital expenditure unrelated to the Southbank Complex—the lower figure of \$41 million mentioned above is, at 18% of assumed EBITDA, above the 17% benchmark. The Authority also notes that, in order to take account of capital expenditure by tenants in the ratio, it would have to be provided with the tenants' EBITDA.)

The Authority took into account the benchmarking study, the Park Place information, information from industry analysts, the theme parks survey and Crown's responses. The Authority acknowledges that not all of the companies in the benchmarking study can be directly compared with Crown and that there are understandable reasons for differences between the reinvestment strategies of theme parks and casinos. However, it remains concerned that Crown's promised minimum 10-year reinvestment level of 14% may not be sufficient in the medium to long term to keep the facility at the world quality standard.

The Southbank Complex is Melbourne's most visited building and is a prominent Melbourne landmark, which Crown has an obligation to maintain as a high quality international class casino complex. It is in this context that the Authority reports its view that Crown's commercial policies raise the concern of a possibility that the Southbank Complex may fall below the required standard.

Commercial/Finance conclusions

The Authority concluded that Crown was now financially stable, that its compliance program was satisfactory and that it now appears to have placed a higher emphasis on compliance matters. The Authority also concluded that, in regard to the Commercial/Finance matters it was satisfied that the casino operator is a suitable person to continue to hold the casino licence and it is in the public interest that the casino licence should continue in force. However, the Authority agreed to indicate to the Minister for Gaming the following matters of concern:

- there are some signs of possible or potential decline in terms of the status of the Southbank Complex as a facility of the world quality standard in casino complexes;
- the presence of only one independent director on the current board of Crown Limited.

Operational

Scope

Five principal matters concerning Crown's operational performance were investigated:

- Management expertise;
- Business ability;
- Infrastructure management;
- Operational compliance;
- International comparisons.

Management expertise

There has been a high turnover of senior Crown executives, illustrated by the positions of Chief Executive Officer and Chief Operating Officer (as they stood prior to a management restructure in April 2000) being held by a total of five persons during the period of the Review.

Crown has appointed a number of senior executives who have demonstrated business experience and managerial ability in industries other than the casino industry. Although the Authority had some concern about the lack of previous casino experience at senior executive level, it noted that the line managers of operational departments and/or their deputies have had lengthy experience in the gaming industry. The lack of casino experience at senior executive level was not considered sufficiently substantial to affect the operating capacity of the casino because there is sufficient experience and technical knowledge of the casino industry at the operational management level.

There has not been such a high turnover of managerial staff in operational departments, and there is a large body of experienced staff available to fill those managerial positions if vacancies arise. It was concluded that Crown has sufficient skills and expertise in its casino management structure to satisfactorily operate the casino.

Business ability

The business plans of Crown's five gaming operations related departments (Electronic Gaming Machines, International Marketing, Security and Service, Surveillance and Table Games) were assessed.

The plans demonstrate that Crown has identified clear objectives and complementary strategies, which should assist in offering gaming products of high quality with efficient and effective service to patrons. Crown's technical development in the conduct and monitoring of gaming activities is at the forefront of Australian casinos.

Both general table gaming and gaming machine revenue have steadily increased over the review period. Revenue from high roller patrons has been maintained at a substantial level. Crown has demonstrated a strong commitment to build the high roller market by maintaining offices in several south east Asian cities and providing appropriate facilities for this market at the casino.

Infrastructure management

Crown's infrastructure was examined in accordance with Crown's obligations under the transaction documents to maintain the facility at the required world quality standard. Crown's business plans indicate that Crown is cognisant of the need to continue its technological innovation by developing systems and gaming products to enhance its business and gaming operations. Crown's continuing innovative use of electronic resources, particularly in table gaming and surveillance activities was noted.

The infrastructure, including an increasing range of non-gaming facilities, has the capacity to attract high levels of patronage to the casino complex. The non-gaming attractions such as the cinemas, restaurants, amusements, showroom, shops and convention facilities have, when viewed as a whole, been successful in attracting people to the complex. (Concern about the maintenance of some facilities is discussed on page 35.)

Crown invests significantly in training, with this having cost an average of 3.6% of employment costs during the period of the Review. Also during the review period Crown's training facility, "Crown College", became a registered training organisation with the Office of Post Compulsory Education, Training and Employment. It continued to provide a satisfactory level of training for Crown's operational staff.

Operational compliance

The compliance of Crown's operations with the Casino Control Act, the gazetted rules of the games and the approved system of internal controls and accounting procedures was examined. The Authority also noted that Crown had established a compliance committee during 1998 and produced a comprehensive compliance policy document (this was also the subject of consideration in the Commercial/Finance investigation).

Compliance with Games Rules and Procedures

The total number of table gaming rule and procedural errors detected by inspectors (379) declined in the period of this review compared with the first triennial review (584). Most of the errors detected were minor breaches that did not warrant action by the Authority.

Disciplinary action was taken by the Authority for eight gaming related incidents resulting in total fines of \$113 000 for seven of the incidents (including one written censure in addition to a fine) and a written censure for the remaining incident. Given the reduction of breaches detected, despite the 65% increase in the number of gaming tables at the Southbank Casino, the number of incidents was not considered to be excessive.

Prevention of minors entering the casino

A large increase has occurred in the detected number of people aged under 18 years attempting to enter the Southbank Casino (an average of 3 075 each month) compared with the Galleria Casino (494 each month). Despite this increase, the number of minors detected inside the casino has only increased from an average of 4.4 each month at the Galleria Casino to 5.8 at Southbank. This level is not considered excessive given both the increased numbers of minors attempting to gain entry and the five additional public entrances at the Southbank Casino.

Disciplinary action was taken by the Authority against Crown on two occasions for the entry of minors and resulted in total fines of \$22 000. Neither incident concerned the normal screening for minors at the public entry points.

Excluded persons

Section 72 of the Casino Control Act provides for the “exclusion” of persons from the casino and makes it an offence for an excluded person to enter the casino. An exclusion order for any period longer than 14 days must be issued in writing and a copy must be given to the Authority.

As at 31 May 2000, there were 882 people excluded from the casino, of whom 607 had been excluded on their own application. (The total number of written exclusion orders issued in the period from 1 July 1997 to 31 May 2000 was 1 397, including 480 on “own application”.)

For the period of the Review, the weekly average number of times excluded persons were detected in the casino was just over 10—a level considered acceptable by the Authority. The bulk of these entries is comprised of a small number of excluded persons who made multiple appearances.

In the period from 1 July 1997 to 31 May 2000, 441 charges had been filed against 66 people for entering the casino in breach of an exclusion order.

Most people caught breaching exclusion orders were detected, by Crown staff, shortly after entering.

Other Regulatory Issues

Following a hearing on 18 November 1997, the Authority fined Crown \$15 000 for undertaking alterations to a licensed gaming area without obtaining the prior approval of the Director of Casino Surveillance as required by section 59 of the Casino Control Act. The alterations were to the settlement room in a high roller area known as the Mahogany Room and were performed over a five-week period between 23 June and 30 July 1997.

Following a hearing on 21 September 1998, the Authority fined Crown \$15 000 in relation to a Crown staff member gaining unaccompanied access on 4 March 1998 to the main area in which table games money is counted, in breach of the approved internal controls. The basis of the decision was that the Authority found there had been a failure to implement the system of internal controls as required by the Casino Control Act.

Gaming equipment approval and reliability

Crown has complied with controlled contract and approval procedures for the supply and use of gaming equipment.

Whilst the operation of the Caribbean Stud jackpot system was of concern for the first six months of operation at the Southbank Casino, this equipment has operated satisfactorily since modifications were made.

Other gaming equipment is considered to have operated satisfactorily.

Compliance with external agencies

The main external agency issues related to cash transactions reporting and occupational health and safety.

Crown is a “cash dealer” for the purposes of the *Financial Transactions Reports Act 1988* (Commonwealth), under which Crown is required to report to the Australian Transaction Reports and Analysis Centre in respect of financial transactions and as to the identification of customers, including:

- suspect transactions, which cause a feeling of apprehension or mistrust;
- significant cash transactions (of \$10 000 or more or involving a cash transfer into or out of Australia of \$5 000 or more);
- “100 point” identity verification for account signatories

Cash transactions reporting is an important law enforcement tool for detection of money laundering, whether suspected in a casino or elsewhere. Enquiries made with AUSTRAC satisfied the Authority of Crown’s compliance with this legislation, under which Crown had in the period 1 July 1997 to 31 December 1999 reported 38 002 significant cash transactions and a number (not able to be disclosed) of suspect transactions.

The Authority was also satisfied that Crown had complied with legislative requirements in the area of occupational health and safety. However, the Authority noted that the premiums paid by Crown to the Victorian WorkCover Authority for the past two completed financial years were assessed at just over 2.9% of certified remuneration. An indicative industry rate is 2.3% (“gambling other than lotteries” is the classification).

Cost of WorkCover was raised with Crown for comment, and a briefing was provided to Authority representatives. Crown pointed out that its business was not the same as, and was conducted on a different scale from, that of other (mainly hotel and club) gaming licensees. Crown also advised that its WorkCover arrangements were about to change, as PBL had been approved as a WorkCover self-insurer. This approval had involved a thorough examination of Crown’s claim processes. Crown also produced evidence of a high level detailed management reporting for work-related accidents, to show how seriously the issue is taken.

Casino related crime

The Victoria Police advised that:

- From 1 November 1996 to 1 December 1999, 791 offenders were processed for a total of 1 627 offences.
- No major incidents of money laundering have been reported. However, a significant number of drug dealers arrested (not on casino premises) revealed that they gambled excessively during relatively short periods.
- There is little evidence to support media reports that drug traffickers use the casino for drug trafficking.

- One person was arrested and prosecuted for “loan sharking” in the casino.
- No arrests have been made for prostitution offences in the casino, although there have been reports of prostitution.
- International gaming cheats are being readily identified, apprehended and prosecuted due to intelligence sources and the efficient use of surveillance.

Pending investigations

At any one time, there will be a number of investigations pending on operational issues. This is the case now and the matters which are incomplete will be included in the next triennial review.

International comparisons

The relevance of the benchmarking study to the Operational reference was in respect of the determination of whether Crown can be said to be managing and operating the casino “to a first class standard comparable to world class international casinos, hotels and other facilities equivalent to those comprising the Crown Casino and Ancillary Facilities”.

The layout of the gaming floor compared well with the casinos in the benchmarking study, and ease of patron movement, both in the gaming area and the ancillary facilities, reflects the design. Likewise, car parking is adequate and compares favourably. Customer service appears to be of an equal standard to the top casinos in Las Vegas.

In recent years and more particularly during 1999, Crown has expanded the western end of the Southbank Complex by providing a number of ancillary facilities in the Clarke Street Building for the benefit of the local market. It has awarded leases to tenants who have installed a McDonald’s family restaurant (120 seats); a KFC outlet (110 seats); a Pasta Express outlet (100 seats); a fourth nightclub “Next Blue” (280 seats—and the capacity to accommodate 750 people) and an eight lane ten-pin bowling alley. This style of development is not exceptional in comparison with the casinos in the benchmarking study.

However, the on-going appeal of the Southbank Complex has been diminished by the closure of a number of premium retail outlets and by what are perceived as cost driven factors, in cutbacks in the frequency and extent of the gas-flame “Fire Brigade” on the promenade and the reduction in the special effects in the Atrium. Spectacles are common features of the casinos against which Crown was benchmarked (the Bellagio casino in Las Vegas has, among its attractions, a botanical conservatory and an art gallery) and are included in casino complex design to broaden the appeal of the properties.

The Authority also had concerns, with respect to the world quality standard, about management attention to detail (and possibly dedication of resources) in maintenance and cleaning. This concern arose not only from a review of patron comments but also by personal inspections by members of the Authority (on 18 April 2000) and also by staff during the course of the Review.

When invited to comment, Crown's Chairman, Mr James Packer, acknowledged that recent performance in the area of cleanliness had not been up to the high standards expected by its patrons and found in casinos of the world quality standard. This was attributed to certain difficulties being experienced by Crown's cleaning contractor. Mr Packer outlined a four-point plan to resolve the issue. This will be monitored by the Authority.

Operational conclusions

The terms of reference provided the basis for the scope of investigations. The Authority is satisfied that operational investigations undertaken by the Working Party were conducted in accordance with and fulfilled the requirements of the terms of reference for the Operational Sub-Committee of the Authority.

The Authority found that operationally Crown is at the forefront of Australian casinos and many aspects of the Southbank Complex are consistent with Crown's obligation to maintain it to the world quality standard. However some matters of concern have been noted.

7. FINDINGS

Issues for determination

Section 25 of the Casino Control Act requires the Authority, once it has completed its triennial investigation, to form an opinion about two things:

- whether the licensee, Crown Limited, is still a suitable person; and
- whether it is in the public interest, as that expression has been specially defined, for the casino licence to continue in force.

The first point focuses directly on the licensee, its probity, conduct and capabilities. The second deals with the more general concern that a large open casino should only be allowed to continue if it is possible to maintain public confidence and trust in the credibility, integrity and stability of the casino's operations.

In 1997, it was the view of the Authority that Crown had effectively, efficiently and fairly conducted the operation of a major casino in its first three years of operation. The Authority was also satisfied that the manner of operation had engendered the necessary public confidence.

Suitability of Crown

After a comprehensive probity investigation, the Authority is satisfied with the probity of Crown.

The Authority is satisfied that, for the purposes of this review, Crown's current commercial position is consistent with it being a suitable casino operator.

The Authority is of the view that Crown's casino operations have, subject to the matters disclosed in this report, continued to be effective, efficient and fair. Crown's performance has not been perfect. However, Crown's performance has been what could reasonably have been expected of it, taking into account the size and complexity of the Melbourne Casino and the Southbank Complex. Operationally, Crown is in the forefront of Australian casinos. The Authority is satisfied that Crown, its associates and staff have the appropriate experience and capacities to operate a large open casino in Melbourne.

These findings enable the Authority to be satisfied that Crown is a suitable *person* to hold a casino licence.

Continuity of the licence

The Authority is also satisfied that, in the period of the Review, there has generally been public confidence and trust in the credibility, integrity and stability of casino operations due to the manner in which the Melbourne Casino has been conducted. There would therefore be no statutory basis to cease having a large open casino and, accordingly, it is in the public interest that the casino licence remain in force.

8. AUTHORITY'S OPINION

Following its investigation for the purposes of section 25 of the **Casino Control Act 1991** in respect of the period 1 July 1997 to 30 June 2000, the Victorian Casino and Gaming Authority has formed the following opinion:

- (a) Crown Limited is a suitable person to hold the casino licence;
- (b) it is in the public interest that the casino licence should continue in force.

SUE WINNEKE
Chairman

ANNE EDWARDS
Deputy Chairperson

HENRY BOSCH

GEORGE DAVIS

ROBERT GRIBBEN

DESMOND HORE

DONALD SWAN

TRANG THOMAS

APPENDIX 1—GLOSSARY OF TERMS

ASIC	Australian Securities and Investments Commission, formerly the Australian Securities Commission
ASX	Australian Stock Exchange Limited, operator of the main stock market in Australia
Atrium	A major internal feature of the Southbank Complex affording access to the casino, the Crown Towers Hotel and the dining and convention facilities, the Atrium features an integrated music, light and water show
AUSTRAC	Australian Transaction Reports and Analysis Centre, the agency established under the <i>Financial Transactions Reports Act 1988</i> (Commonwealth) for the collection of cash and other financial transactions information
Authority	The Victorian Casino and Gaming Authority, formed in 1994 by a merger of the VCCA and the Victorian Gaming Commission
Benchmarking study	A comparative study of six overseas and two Australian international casinos conducted by the Casino Project Manager for the purposes of the Commercial/Finance and Operational investigations
Casino Agreement	Melbourne Casino Project Casino Agreement between the Victorian Casino Control Authority and Crown (as amended and in force)
Casino Control Act	Casino Control Act 1991 (Victoria), No. 47/1991 reprinted to 1 January 1999 (Reprint No. 4) and subsequently amended by No. 16/2000 on 10 May 2000 and No. 24/2000 on 17 May 2000
Clarke Street Building	A building at 6 Clarke Street, Southbank, connected to the rest of the Southbank Complex by an aerial walkway over Whiteman Street and containing car parking and administration offices in addition to non-gaming amusements
CPH	Consolidated Press Holdings Limited, ACN 008 394 509, a substantial shareholder in PBL
Crown	Crown Limited, ACN 006 973 262, holder of the casino licence for the Melbourne Casino (formerly called Crown Casino Limited and Haliboba Pty Ltd)
Crown/PBL merger	The takeover of Crown by PBL, under which PBL issued Crown shareholders with one PBL share for each 11 Crown shares, thereby making Crown a wholly owned subsidiary of PBL with effect from 30 June 1999

Director of Casino Surveillance	A statutory office under the Casino Control Act, the occupant being responsible for the operational regulation of casinos, appointment of inspectors and licensing of special employees in addition to the provision of advice and assistance to the Authority
Director of Gaming and Betting	A statutory office under the Gaming and Betting Act 1994 , the occupant being responsible for generally supporting the Authority <i>The offices of Director of Gaming and Betting and Director of Casino Surveillance are jointly held.</i>
EBDITA	Earnings Before Depreciation Interest Tax and Amortisation—see EBITDA
EBITDA	Earnings Before Interest Tax Depreciation and Amortisation <i>EBITDA (also EBDITA and EBDAIT) is used as a basis of comparison of the core, underlying or operational profitability of businesses by eliminating distortions caused by local tax rules, historical funding arrangements and asset investment decisions. As with any accounting performance measure, it must be used and understood in the context of the industry in which the comparison is being made.</i>
EGM	electronic gaming machine
first triennial review	The review under section 25 of the Casino Control Act, submitted to the Minister for Gaming on 30 June 1997 in respect of the first three years of casino operations.
formal associate	an individual or company identified as an “associate” within the meaning of section 4 of the Casino Control Act, meaning that the person is subject to probity clearance by the VCGA
Fire Brigade	A display system, comprising eight gas fuelled flame throwers, along the Yarra River promenade of the Southbank Complex
Galleria Casino	The name given to the temporary casino which operated at the World Trade Centre from June 1994 until May 1997
high roller	An individual gambler with the means and the desire to wager very large sums of money in a casino <i>There is a distinct international high roller market in which casinos compete against each other, across boundaries, for access to high rollers. This competition involves provision of financial incentives and concessional services. There is a separate casino tax rate for certain high roller business.</i>

Hudson Conway	Hudson Conway Limited, ACN 009 556 629, one of the sponsors of the Melbourne Casino Project, a founding shareholder in Crown Limited and until recently a public company listed on the stock market of the ASX
ICM	Internal Control Manual—the multi-folder document containing the system of internal controls and accounting procedures for the Melbourne Casino approved by the Authority for the purposes of section 121 of the Casino Control Act
internal control manual	see ICM
Management Agreement	Melbourne Casino Project Management Agreement between the State of Victoria and Crown (as amended and in force), ratified by the Casino (Management Agreement) Act 1993
Operations Agreement	Agreement between Crown Limited (as licensee) and Crown Management Pty Ltd (as manager) for the provision of certain services in connection with the operation of the Melbourne Casino <i>The State of Victoria and the VCGA have an interest in this agreement, for the purposes of enforcing its provisions for regulatory purposes, by operation of a supplemental agreement.</i>
Parliament	Parliament of Victoria, unless otherwise indicated
PBL	Publishing and Broadcasting Limited, ACN 009 071 167, holding company of Crown
Southbank Casino	A name used to distinguish the Melbourne Casino at the Southbank Complex from the Galleria Casino (the temporary casino which operated at the World Trade Centre from June 1994 until May 1997)
Southbank Complex	An expression used to identify the Crown Entertainment Complex
special employee licensing process	The probity checking process for employees of a casino and people performing functions in or with respect to the management of a casino <i>The Director of Casino Surveillance is the licensing authority for special employees.</i>
State	State of Victoria
transaction documents	The documents setting out the relationship between the participants in the Melbourne Casino Project, including: the Management Agreement, the Casino Agreement, the Supplemental Operations Agreement, and various other supplemental and financial agreements

VCCA	Victorian Casino Control Authority, predecessor of the VCGA
VCGA	Victorian Casino and Gaming Authority
world quality standard	<p>An expression used to describe the obligations Crown has to maintain the Southbank Complex as a “high quality, international standard” casino complex and to ensure that the complex is managed and supervised to a “first class standard comparable to world class international casinos, hotels and other facilities”</p> <p><i>Discussion of the world quality standard obligation starts on page 27 of this report.</i></p>

APPENDIX 2—BACKGROUND OF THE MELBOURNE CASINO PROJECT

In December 1990, the Victorian Government announced a decision to allow the establishment in Melbourne of a large open casino, and had commissioned Xavier Connor Q.C. to inquire into and report on a series of related questions. Mr Connor had been the author of an earlier report (in April 1983) which had recommended against the establishment of a casino. In this second report, delivered in February 1991, Mr Connor provided advice on how an open casino should be established and, in particular, on the probity safeguards that should be put in place.

Following receipt of Mr Connor's report, in the 1991 Autumn Session of the Victorian Parliament, the Government introduced two Bills to facilitate the establishment of a legal gaming industry in the State, one relating to machine gaming and the other to casinos. The Casino Control Bill largely followed Mr Connor's recommendations.

The purposes stated for those Bills make it clear that the Government saw regulated gaming as part of an economic strategy for the development of the State. Both Bills were passed by Parliament, with the Casino Control Bill becoming law in June 1991.

The then Major Projects Unit distributed a registration of interest brief in November 1991. This attracted 23 responses, 12 of which conformed to the requirements. One of these responses was on behalf of the Hudson Conway backed "Crown" consortium.

The process of evaluating the registrations was taken over by the Victorian Casino Control Authority, on its appointment in February 1992. The VCCA understood that its role would be in three phases:

- selection of the casino licensee;
- monitoring the construction of the casino and regulating any temporary casino;
- on-going regulation of the casino when construction was complete.

The VCCA set up evaluation processes for the separately streamed evaluation of probity issues, design and siting issues and financial issues. While "passing probity" was not negotiable, the evaluation processes were structured to encourage competition between the bidders—as their number was reduced from 12 to three, and then two—for the best design at the optimal financial outcome for the State.

The VCCA was assisted in these separate streams by expert probity resources provided by the Victoria Police and other law enforcement agencies, a Development and Siting Advisory Panel and a Finance Advisory Panel, with access to consultants as required.

Prior to the conclusion of the competitive component of the bid process, the present Whiteman Street, Southbank site was identified as the site for the casino complex, and the Galleria of the World Trade Centre in Flinders Street, Melbourne was identified as the site for a temporary casino.

The VCCA's selection of Crown as the proposed licensee for the casino was confirmed by the Government's acceptance of the commercial terms of the proposed establishment and development of a casino in the execution of the Management Agreement for the Melbourne Casino Project and a number of transaction documents on or shortly after 20 September 1993. As a reflection of the Crown bid, the Management Agreement called for not only the construction of a casino, but for the development of an entertainment complex of the world quality standard, within clearly defined timelines. In the event of a breach of the timelines, liquidated damages would be payable to compensate the State for lost revenue opportunities.

In addition to promises in the Management Agreement, there were licence conditions which required Crown to have a sound balance sheet, to operate as a single purpose entity and to seek to maximise revenue to the State through its gaming operations.

The Management Agreement was subsequently presented to and debated by Parliament, being ratified with effect from 14 November 1993. The VCCA licensed Crown on 19 November 1993.

Crown then set about establishing a temporary casino (at the World Trade Centre) and undertaking the initial development work for the Southbank site. Crown also made institutional share placements and an initial public offering in respect of the 60% of its capital not to come from Hudson Conway and its other founding shareholders. The rights to manage the casino (and for this to receive fees including 2% of gross revenue and 5% of net profit) were to be owned by Hudson Conway. Those rights were set out in an agreement called the "Operations Agreement".

The Victorian Casino and Gaming Authority came into existence, as a merger of the VCCA and the Victorian Gaming Commission (established under the **Gaming Machine Control Act 1991**) on 3 June 1994. The Authority continued the work of the VCCA with respect to monitoring the construction of the casino and regulating the temporary casino.

The temporary casino opened on 30 June 1994. Temporary casinos, usually on a smaller scale than the anticipated development, are a common feature of casino projects. They allow the operator to start generating cash flows from gaming while incurring large capital expenditure on construction. They also allow both the operator and the regulator to develop staff and resources to the level that will ultimately be required.

During the course of construction, Crown negotiated with the Government a number of variations to the original project, all of which were approved through Parliamentary processes. The most notable was the approval of a request to approximately double the number of hotel rooms and add a lyric theatre to the Southbank Complex. Because of the stage construction had reached when these features were proposed, there was a later completion date for these features. The completion date for the Southbank Casino was 30 November 1996 and for the Southbank Complex including the Lyric Theatre and Southern Hotel Tower was 30 November 1999 (this date was extended to 30 November 2003 in 1998).

The casino at the Southbank Complex opened on 8 May 1997 (liquidated damages having been paid for the delay from the original completion date). The Southbank Complex included a 500 room, five-star hotel, a cinema multiplex, three nightclubs and a showroom, numerous shops and bars, more than 28 eating places and parking for over 5 000 cars. The complex itself remains to be fully completed by the construction of the Southern Hotel Tower and Lyric Theatre.

The Authority made its first triennial review report on 30 June 1997.

In the months that followed the May 1997 opening, it became clear that, due to the level of costs of construction and development and lower than anticipated gaming revenue, Crown required additional equity investment. This was ultimately provided through an issue of ordinary shares and the placement of preference shares to Hudson Conway (in exchange for ownership of the Operations Agreement and its cash flows). However, pressure remained on the share price of Crown.

In December 1998, Publishing and Broadcasting Limited, a listed company which owns the Australian Consolidated Press magazine group and the Nine television network, announced a proposal to merge with Crown, offering one PBL share for each 11 Crown shares. The Crown/PBL merger received the necessary regulatory and shareholder approvals in time to take effect on 30 June 1999.

Under the terms of approval of the Crown/PBL merger, PBL agreed to operate as a single casino entity, reflecting Crown's earlier promise to be a single purpose Melbourne casino company.

APPENDIX 3—LEGAL ADVICE

Extracts of advice of Mrs S. M. Crennan Q.C.

Mrs Crennan was briefed to advise in respect of the proper construction of the terms used in section 9 of the **Casino Control Act 1991**, namely:

'suitability' (actually 'suitable person')

'good repute'

'character'

'honesty'

'integrity'.

General Principles

Each of the words about which advice is sought would be regarded as ordinary words, not technical words, for the purposes of applying the usual principles of statutory construction.

In broad terms the guiding principles of statutory construction are:

- (a) a statute is to be construed according to the intention of Parliament;
- (b) the intention of Parliament is to be found by examining the language and words in the statute as a whole;
- (c) general words are to be given their ordinary and natural meaning, unless that would lead to absurd or inconsistent results; and
- (d) it is also permissible to consider the purpose of a statute, sometimes called considering the "mischief" to which it was addressed. This is particularly important when words of wide meaning which are not defined in a statute have been used.

Section 35 of the **Interpretation of Legislation Act 1984** (Vic) provides that a construction promoting the purpose or object of an Act is to be preferred to a construction which does not promote the general purpose or object of the Act. These are the first and general tests to be applied to determine what the words in the Act mean. The next and specific tests that are then applied are those set out in the statute, for example section 9(2) contains its own non-exhaustive tests in respect of the prohibition on granting a licence unless satisfied the applicant is a '*suitable person to be concerned in or associated with the management and operation of a casino*' as set out in section 9(1).

Casino Control Act 1991 ('the Act')

In considering Parliament's intention with the Act and its purpose as expressed in the statute it is necessary to consider section 1 of the Act:

1. Purpose

- (1) The purpose of this Act is to establish a system for the licensing, supervision and control of casinos with the aims of –
 - (a) ensuring that the management and operation of casinos remains free from criminal influence or exploitation; and
 - (b) ensuring that gaming in casinos is conducted honestly; and
 - (c) promoting tourism, employment, and economic development generally in the State."

Sub-sections 1(a) and (b) are particularly relevant as context for construing both sections 9 and 25 of the Act. Section 25 is the section under which the Authority is now investigating the suitability of the current licence holder Crown Casino Limited to continue to hold the casino licence.

Part 2 of the Act governing the licensing of casinos falls to be considered in the context of the statutory purpose laid down and section 9 is part of the scheme to be followed in respect of the grant of a licence. Sub-section 9(1) contains a prohibition. The Authority must not grant an application for a casino licence unless "satisfied that the applicant, and each associate of the applicant (as defined in section 4), is a *suitable person* to be concerned in or associated with the management and operation of a casino". Section 9(2) obliges the Authority to consider *inter alia* whether –

- "(a) each such person is of *good repute* having regard to *character, honesty and integrity*," (my emphasis).

Section 25 obliges the Authority:

- (1) Not later than three years after the commencement of operations in a casino ... to form an opinion as to whether or not –
 - (a) the casino operator is a *suitable person* to continue to hold the casino licence." (my emphasis).

There are no mandatory considerations set out in section 25 but a 'suitable person to be concerned in or associated with the management and operation of a casino' (s. 9) and 'a suitable person to continue to hold the casino licence' (s. 25) must give rise to very similar if not identical considerations.

Suitability

I have been asked to advise as to the meaning of 'suitability'. Probably this is best addressed by construing the exact statutory phrase '*suitable person to be concerned in or associated with the management and operation of a casino*'. It is a phrase of potentially wide meaning but the context helps give precision to the meaning and as mentioned before undefined words such as 'suitable person' must be construed by reference to the context: *Cunliffe v. The*

Commonwealth (1994–1994) CLR 272 at 302. It is ‘suitability to continue to hold a casino licence’ which is relevant under section 25. Thus matters which may indicate a person is unsuitable for some other occupation, say clergyman for example, are not relevant. If one considers sub-sections 9(2)(a)–(g) inclusive it is clear that a ‘suitable person to be concerned in or associated with the management and operation of a casino’ must at least be both ‘fit and proper’ i.e. ‘of good repute’ (s.9(2)(a)) and ‘operationally capable’ i.e. able to obtain the financial resources to operate the casino successfully and properly (ss.9(2)(d) and (e)).

The closeness in meaning of ‘suitable person’ and ‘fit and proper person’ has been noted by the Courts: *Wentworth v. N.S.W. Bar Association* (1992) 176 CLR 239 at 255. See also *Cunliffe*, supra.

‘Suitable person to continue to hold the casino licence’ in section 25, in my opinion, should similarly be construed to mean a person who is both ‘fit and proper’ and ‘operationally capable’. There is nothing in section 25 which suggests the phrase should be read down from the explicit meaning fleshed out by sub-section 9(2) for the purposes of section 9(1). I note in passing that the confidential Report of the Probity Investigation Working Party, being part of the papers provided to me addresses issues relevant to a person’s ‘good repute, having regard to character, honesty and integrity’, that is the probity report focuses on whether a person is suitable from the viewpoint of being a ‘fit and proper person’.

Accordingly any matter relevant to a person being:

- (a) fit and proper; and
- (b) operationally capable;

may be taken into account in determining whether a person is a ‘suitable person to continue to hold the casino licence’ under the provisions of section 25. The tests to be applied as to what the words mean have been dealt with by me above. These include applying the usual general principles of statutory construction then applying the specific tests as set out in the Act, as in section 9(2). There is no other test as such, as to whether persons meet the standards however guidance from the cases would suggest that on a proper analysis the basic test is whether the Authority achieves the requisite satisfaction that there is nothing which reflects adversely on the operator’s fitness to operate a casino: *Cunliffe*, supra at 303. The exercise the Authority engages in is to be satisfied (or not) that the operator is a ‘suitable person to continue to hold the casino licence’ having regard to them being both a ‘fit and proper person’ and ‘operationally capable’. I have made reference before to *Bringinshaw v. Bringinshaw & Anor* (1938) 60 CLR 336 at 361–362. In essence, the Authority would want the suitability of a person to continue to hold a licence to be a matter upon which they were *reasonably satisfied*. The Authority should bear in mind the seriousness and gravity of any finding to the contrary when deciding whether or not they were reasonably satisfied.

Good repute

Advice has already been provided by me on 26 May 1993 as to construction to be given to 'good repute' in section 9(2) of the Act. On that occasion I opined that 'good repute' in section 9(2) should be construed widely, not narrowly, and would include 'reputation in fact and reputation in merit' the distinction between those being further explained in that advice. One reason for that opinion was that section 9(2) obliged the assessor of 'good repute' to have regard to 'character, honesty and integrity'. It appeared to me that the Authority obviously could take into account bad character or want of honesty and integrity even if these were not commonly or generally known. 'Repute' covers an 'opinion' or 'estimate' of a person (*Oxford English Dictionary*, 2nd ed, Vol. XIII, p. 678) and does not have to be read down to one of its synonymous meanings which is the 'common estimate of a person'.

Character

The word has as one of its ordinary meanings 'the mental or moral constitution of a person' (*Oxford English Dictionary*, *supra*, Vol. III, p. 31). To say a person has 'character' or 'good character' implies 'good repute' so there is some degree of overlap. Equally 'bad character' can imply 'bad repute'.

Honesty

Because 'honest' and 'dishonest' are descriptions of conduct frequently used in the law and in the case of 'dishonest' particularly in the criminal law, 'honesty' is a word possibly narrower and clearer than the words 'character' and 'integrity'. 'Honesty', in the prevailing modern sense of the word, means 'uprightness of disposition and conduct; integrity; truthfulness; straightforwardness; the quality opposed to lying, cheating or stealing' (*Oxford English Dictionary*, *supra*, Vol. VII, p. 349). If a person has engaged in dishonest conduct, in the sense known to the law, particularly the criminal law, such a person lacks honesty being a quality highly relevant to being 'a suitable person to continue to hold a casino licence' within the meaning of section 25.

Integrity

Integrity means 'freedom from moral corruption'. It is a synonym for honesty. It carries with it the connotation of truthfulness and fair dealing (*Oxford English Dictionary*, *supra*, Vol. III, p. 1066).

Other questions

- (a) Community standards whether consensual or legal are relevant as guidelines or specific standards of good repute, character, honesty or integrity. It is Australian standards i.e. recognised by the Australian community which are relevant. 'Public interest' which is relevant to section 25(2) is defined in section 3 and includes as a legitimate object of public interest 'public confidence and trust in the credibility, integrity and stability of casino operations' must refer to the confidence of the public in Victoria. Arguably the standards imposed under the Victorian and New South Wales legislation may be higher in

some respects than standards imposed under other Australian legislation bearing in mind the derivation from the New Jersey model of legislation. See for example *Darling Casino v. New South Wales Casino Control Authority and Ors.*, an unreported decision of the High Court dated 4 April 1997 at pp.26–32. Be that as it may and I have not made any detailed comparisons for the purposes of this advice, it seems to me the public confidence referred to in section 3 must be a reference to local confidence which in turn will be grounded in local community standards. Standards may well be different in different countries and cultures but I do not deal with that further having regard to what I have said about the relevant community standards.

- (b) Innuendo and rumour are matters which go to ‘reputation in fact’ as described in my earlier advice. To ensure that real (or actual) issues are not clouded by innuendo and rumour it is appropriate to investigate innuendo and rumour to see whether such have a basis in fact. In the absence of a proper factual basis, innuendo and rumour cannot in fairness be given any significant weight at all. This is consistent with the advice of the Solicitor-General of 23 June 1994 in respect of the weight to be given to allegations of criminal conduct where no charges were laid. It is axiomatic that natural justice must be afforded to the holder of a casino licence if any decision affecting the holder’s interest is to occur. *Annetts v. McCann* (1990) 170 CLR 596 at 598. Accordingly an operator must be given an opportunity to deal with matters of fact and also innuendo or rumour if any of these will constitute a basis for an adverse finding. It also has to be remembered a cardinal principle of Australian criminal law is a person is presumed innocent until proven guilty. It appears to me that the Report of the Probity Investigation Working Party has tackled the issue of innuendo and rumour by testing where it can, whether there is a foundation in fact in any innuendo or rumour. This is the correct approach to ensure that innuendo and rumour do not cloud deliberations.
- (c) Given the objects of the Act, particularly sub-sections 1(a) and (b) relevant material to section 25 may be very wide. If it is considered to be somewhat analogous to discoverable material in civil litigation, it would include any material which may lead to a ‘chain of inquiry’ as to whether a person is a ‘suitable person to continue to hold a casino licence’ within the meaning of section 25. *Cf. Wellcome v. VR Laboratories* (1979–80) 29 ALR 261. However, perhaps the real issues or questions are how does the Authority weigh established facts versus suspected facts or how does it weigh opposing accounts of facts, one inculpatory, one exculpatory? There is no easy answer to such dilemmas but obviously if the *Briginshaw v. Briginshaw* standard of ‘reasonable satisfaction’ is kept in mind, the Authority will be able to weigh up matters by reasonably satisfying itself as to what is more probable than not, what inferences are fair and so on.
- (d) The Authority would be entitled to aggregate material to reach an adverse conclusion in my view. Indeed, it would probably be

inappropriate to only consider each factor in isolation just as it is a mistake with circumstantial evidence to consider each individual circumstance rather than all of them together. See for e.g. *Howarth v. Adey* (1996) 2 VR 535.

- (e) More recent incidents could fairly be given more weight than incidents distant in time. The concept of or a belief in ‘reformation’ is a principle underpinning the theory of punishment in the criminal law in Australia. For example, a person who was guilty of a criminal offence as a youth, then led a blameless life for thirty years cannot be treated the same as a person who has engaged in recurrent criminal activity from youth to middle age. There is a further consideration which is that recent incidents are more likely to impact on the public confidence and trust in the credibility, integrity and stability of casino operators, although media reports may return to incidents more remote in time. The seriousness of any incident is also a balancing factor. A serious incident which is remote in time may be weighted very differently from a trivial incident remote in time.

SUSAN M. CRENNAN
Owen Dixon Chambers West
4 April 1997

Extracts of advice of Mr D. J. Habersberger Q.C.

Mr Habersberger advised in respect of the extent of the investigation required by section 25 of the Casino Control Act, as follows:

It is clear that the first limb of s. 25(1) requires an investigation of the suitability of the casino operator, which includes its associates. This is a similar test to that laid down in s. 9(1) of the Act, as amplified by the particular matters listed in s. 9(2), and would have been applied by the Authority before it granted Crown Casino Ltd (“Crown”) its casino licence in November 1993. The first limb of s. 20(1) is also virtually the same test as that specified in s. 20(1)(d) as a ground for disciplinary action. In essence, one could say that s. 25(1)(a) is a further attempt at “ensuring that the management ... of casinos remains free from criminal influence or exploitation” (see s. 1(a) of the Act).

Therefore, in my opinion, the Authority need to go no further than s. 9(2)(a) to (g) for guidance as to what matters it would have to consider in forming the opinion required under s. 25(1)(a) — whether the casino operator and its associates were still persons of good repute, having regard to character, honesty and integrity, whether they were still persons of sound and stable financial background, whether the casino operator still had a satisfactory ownership, trust or corporate structure, whether it still had adequate financial resources and sufficiently experienced staff, whether its business ability was such that it was maintaining a successful casino, whether there were any business associations with any persons or bodies who were not of good repute

or who had undesirable or unsatisfactory financial resources and whether all relevant officers were still suitable persons to act in their particular capacities.

Understanding what is required by the second limb of s. 25(1) is rather more difficult. A number of points can be made concerning its construction. First, the phrases “public interest” or “interest of the public” are defined for the purposes of the Casino Control Act in s3(1) thereof as meaning:

“ [the] public interest or interest of the public having regard to the creation and maintenance of public confidence and trust in the credibility, integrity and stability of casino operations”.

In my opinion, this definition of the phrase “public interest” is quite restricted compared to what it might have been thought to encompass without the enforced statutory guidance. It is limited to certain aspects of “casino operations” rather than a broader approach to the question of the “public interest”.

Secondly, there can be no doubt that the subject matter of s. 25(1)(b), whatever that may be, is not the same as that in s. 25(1)(a) of the Act.

Thirdly, the distinction between casino operator and casino operations is to be found in the Casino Control Act itself. Part 3 of the Casino Control Act is concerned with the “Supervision and Control of Casino Operators”, whereas Part 5 deals with “Casino Operations.”

Next, the question for the Authority under the second limb of s. 25(1) is whether “ the casino licence” should continue in force, that is the licence of a particular casino operator, in this case, Crown. It is not a direction to the Authority to embark on the task of deciding whether or not there should be any, or any particular number of, casinos in Victoria. Moreover, the question is whether the licence “should continue in force”, that is, whether or not there should be a licence.

The matters discussed in the last paragraph would lead to the conclusion that s. 25(1)(b) does not require the Authority to consider whether Crown’s licence should not continue in force because of an argument that excessive gambling at the Crown Casino is damaging the moral or social fabric of Victorian society or even the “economic development generally in the State” (see s. 1(c) of the Act).

The first point which I wish to make is that to a large extent the Authority is free to determine for itself the procedure to be followed in conducting the investigation. No rules have been set out in the Casino Control Act concerning how such an investigation is to be conducted. (See also s. 92(5) of the **Gaming and Betting Act 1994**). Unlike ss. 16 and 20, there is not even a reference to the Authority giving the casino operator an opportunity to make submissions and requiring the Authority to “consider any submissions” made. However, there is no doubt that whatever procedure the Authority decides to adopt, it must afford the casino operator natural justice.

D. J. HABERSBERGER
Owen Dixon Chambers West
9 May 1996

APPENDIX 4—PROCESS AUDITOR COMMENT

APPENDIX 5—CALL FOR PUBLIC SUBMISSIONS

Advertisement published on Saturday 13 February 1999 in *The Age* and *The Australian*

Chart 6.1—Market Capitalisation of Melbourne casino operator over time

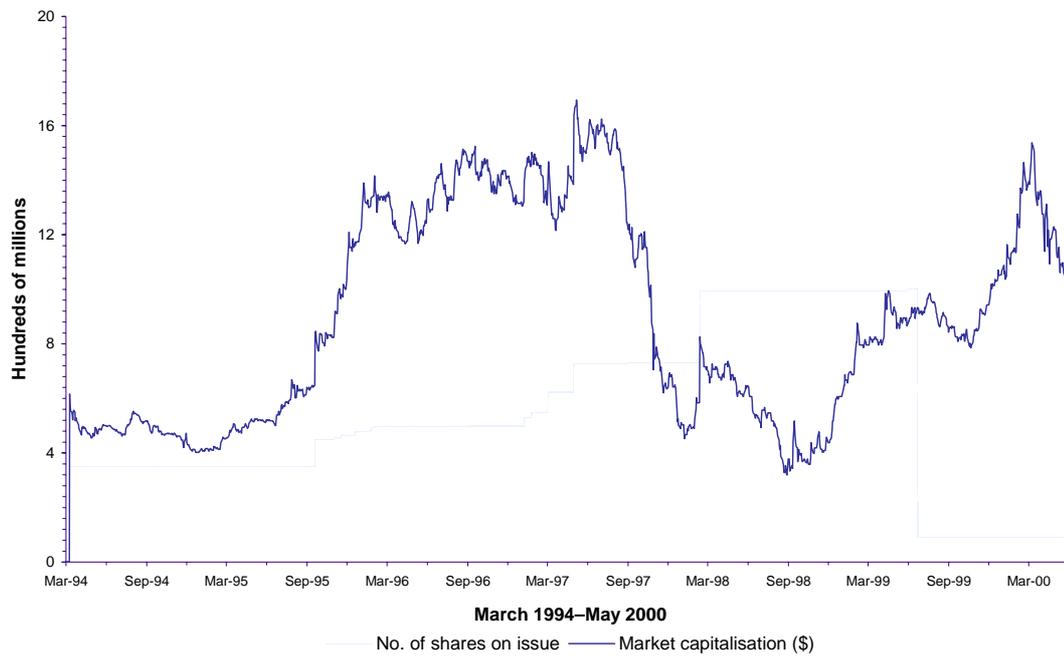


Chart 6.1 with only the Blue line visible

Chart 6.1—Market Capitalisation of Melbourne casino operator over time

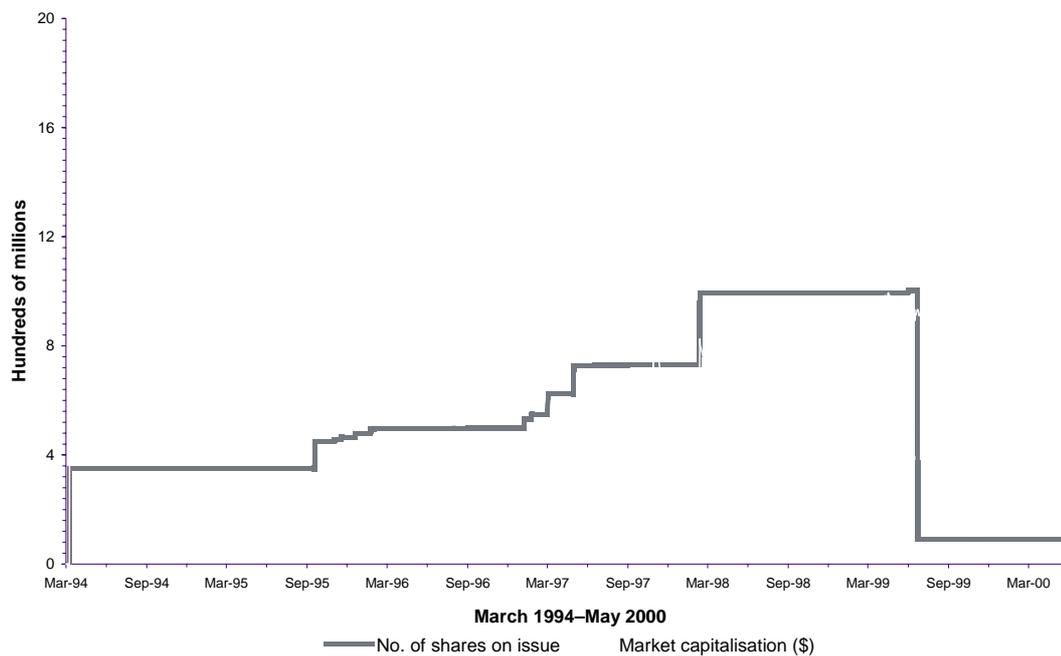


Chart 6.1 with only the Black line visible

Signature of **Sue Winneke** supplied for the purposes of the Second Triennial Review Report

└─┘

└─┘

└─┘

└─┘

Signature of **Anne Edwards** supplied for the purposes of the Second Triennial Review Report

└─┘

└─┘

└─┘

└─┘

Signature of **Henry Bosch** supplied for the purposes of the Second Triennial Review Report

┌

┐

└

┘

Signature of **George Davis** supplied for the purposes of the Second Triennial Review Report

┌

┐

└

┘

Signature of **Desmond Hore** supplied for the purposes of the Second Triennial Review Report

└─┘

└─┘

└─┘

└─┘

Signature of **Donald Swan** supplied for the purposes of the Second Triennial Review Report

└─┘

└─┘

└─┘

└─┘